



*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Department of Mental Health*  
*25 Staniford Street*  
*Boston, Massachusetts 02114-2575*

DEVAL L. PATRICK  
*Governor*

TIMOTHY P. MURRAY  
*Lieutenant Governor*

JUDYANN BIGBY, M.D.  
*Secretary*

BARBARA A. LEADHOLM, M.S., M.B.A.  
*Commissioner*

(617) 626-8000  
TTY: (617) 727-9842  
[www.state.ma.us/dmh](http://www.state.ma.us/dmh)

**MEMORANDUM**

**To:** Interested Parties  
**From:** Barbara A. Leach, Commissioner  
**Date:** March 24, 2008  
**Re:** New DMH Regulations

On April 4, 2008, new Department of Mental Health regulations governing the transportation of individuals admitted to psychiatric facilities who may require restraint during transport will take effect. Amended regulations governing eligibility and service plan appeals will also take effect on that date. These regulations were the subject of a public hearing on November 15, 2007 and a comment period that expired on November 30, 2007.

Transportation Regulations - 104 CMR 27.08:

There are numerous situations in which individuals who are admitted to psychiatric facilities need to be transported from the facility to other locations. These situations include transfers between facilities, need for treatment at a medical hospital and court appearances. Transport is often by ambulance or facility vehicles. Staff doing the transports, especially ambulance staff, typically require some sort of legal documentation authorizing them to do the transportation, and, if necessary, to restrain the individual.

Under current regulations the only mechanism to authorize transport of a person is under MGL c. 123 §12(a), with the issuance of a "pink paper," which is intended for emergency psychiatric hospitalizations only. The practice has been that the clinician filling out the pink paper crosses out all of the emergency justification required under Section 12, and writes "for transportation only." This is an inappropriate use of a pink paper, since invoking Section 12 places a person under the emergency authority of Chapter 123. It requires that the receiving facility conduct a psychiatric evaluation, even if the purpose of the trip is for medical care, and it has no real application to transportation for transfers, court appearances, or other reasons.

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Accordingly, DMH has replaced the current 104 CMR 27.08, Transfer of Patients, with a new regulation entitled Transfer and Transport of Patients. The new regulation provides a mechanism for ordering the transport of individuals who are psychiatric inpatients, with restraint if necessary, from the psychiatric facility to specified locations (such as medical hospitals) when necessary for their treatment. It imposes limitations on the use of restraints by facility staff during transport designed to protect the rights, dignity and safety of the person being transported.

DMH has designed a new form for use in the ordering of transportation under this regulation. The form can be accessed on the DMH website: [www.mass.gov/dmh](http://www.mass.gov/dmh).

Eligibility and Service Plan Appeals - 104 CMR 29.15:

Department has replaced current 104 CMR 29.15, Appeals of Eligibility and Service planning with a new regulation with the same title. The proposed regulation clarifies the hearing officer's authority with respect to findings of fact and conclusions of law and establishes timelines for the issuance of the Commissioner's decision after receipt of a hearing officer's recommended decision.

The new regulations will be published in the Massachusetts Register on April 4, 2008. Unofficial copies of the regulations can be found on the DMH website: [www.mass.gov/dmh](http://www.mass.gov/dmh)